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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,868	08/18/2003	Vinh Thanh Vu	125-001US	3334

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DEMONT & BREYER, LLC
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EXAMINER

SAN MARTIN, EDGARDO

ART UNIT	PAPER NUMBER
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2837

MAIL DATE	DELIVERY MODE
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07/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/642,868

Applicant(s)

VU, VINH THANH

Examiner

Edgardo San Martin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 26-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3, 9, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goubergen (US 5,330,165).

With respect to Claims 1 and 9, van Goubergen teaches an article for use with spherical vibration-control elements (Figs.1 – 8), wherein the article comprises a plate (Fig.1, Item 2), having a number, n , of spaced wells (Fig.1, Item 4) arranged in a two-dimensional array, wherein the two-dimensional array comprises at least two rows of the spaced wells with a minimum of three wells in each row (Figs.1 and 6); and the wells are suitably sized so that when a well receives the spherical vibration control element (Fig.7, Item 1), the vibration control element contacts the plate at substantially every point along a perimeter of the well (Fig.7)(Figs.1 – 8; Col.1, Line 54 – Col.4, Line 57 and Col.6, Lines 51 - 65); but fails to disclose wherein, in use, the only constraint to unrestricted lateral movement of said spherical vibration control elements are said wells.

The Examiner considers that it would have been an obvious matter of design choice to provide the wells as the only constraint to unrestricted lateral movement of the spherical vibration control elements because it would not depart from the scope and spirit of the van Goubergen invention; additionally, van Goubergen establishes that the

use of the thin bands or strips (6) is to facilitate the assembly of the vibration damper and that the recesses (4) are for limiting the lateral movement of the spheres (1).

With respect to claim 3, van Goubergen teaches further comprising a top plate (Fig.1, Item 2), wherein, in use with the vibration-control elements (Fig.1, Item 1), the top plate is disposed above the plate, proximal to the plurality of wells (Fig.1, Item 4).

With respect to claim 10, van Goubergen teaches wherein, when the vibration-control elements (Fig.7, Item 1) are disposed in the wells (Fig.7, Item 4), they do not abut a bottom of the wells (Fig.7).

With respect to claims 12 and 13, van Goubergen teaches wherein the vibration-control elements (Fig.1, Item 1) are resilient balls (Col.5, Lines 3 - 5).

2. Claims 2, 4 - 8, 11, 14 - 22 and 26 - 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over van Goubergen (US 5,330,165) in view of Bach et al. (US 3,679,159).

With respect to claims 4 and 6, van Goubergen teaches the limitations discussed in a previous rejection, but fail to disclose further comprising a skirt, wherein the skirt depends from a marginal region of the top plate, and further wherein the skirt extends toward the plate; and wherein the top plate and the plate have the same shape, and further wherein the top plate is larger than the plate such that the plate fits within an area defined by the skirt.

On the other hand, Bach et al. teaches an article for use with spherical vibration-control elements (Fig.1, Items 17 - 20), wherein the article comprises a bottom (Fig.1, Item 12) and top plate (Fig.1, Item 15); wherein the top plate (Fig.1, Item 15) further

comprising a skirt (Fig.1, Item 16), wherein the skirt depends from a marginal region of the top plate, and further wherein the skirt extends toward the bottom plate; and wherein the top plate is larger than the plate such that the bottom plate fits within an area defined by the skirt (Fig.1).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Bach et al. skirt configuration with the van Goubergen design because the skirt, in addition of providing an aesthetic look, it would precludes excessive lateral excursion between the top and bottom plate, and would provide protection against the ingress of dust or any other particulate to the vibration-control elements area that would adversely affect the performance of the article.

With respect to claims 2, 5, 11, 15, 21 and 26, the Examiner considers that it would have been an obvious matter of design choice to employ a desired amount of wells and/or vibration-control elements; also, to provide the perimeter of the wells with a desired diameter; because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. In re Aller, 105 USPQ 233; that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980); in addition, a change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955); furthermore, it has been held that omission of an element and its function in a combination where the remaining elements perform the same function as before involves only routine skill in the art. In re Karlson, 136 USPQ 184.

With respect to claims 7, 8, 14, 19, 20 and 22, the Examiner considers that it would have been an obvious matter of design choice to provide plates and balls of a particular material because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claims 16 – 18 and 27 – 32, van Goubergen teaches the limitations described in the claims (Figs.1 – 8; Col.1, Line 54 – Col.4, Line 57 and Col.6, Lines 51 - 65); in addition, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ F.2d 1647 (1987).

Response to Arguments

3. Applicant's arguments filed on March 5, 2007 have been fully considered but they are not persuasive. The Examiner still considers that the patents to van Goubergen and Bach et al. teach the limitations described in the claims as discussed above. van Goubergen establishes that the use of the thin bands or strips (6) is to facilitate the assembly of the vibration damper and that the recesses (4) are for limiting the lateral movement of the spheres (1).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-2800 ext.37. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Edgardo San Martin/

Edgardo San Martín
Primary Examiner
Art Unit 2837
Class 181
July 5, 2007